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OFFICE OF PETITIONS

In re Application of
Tse
Application No. 09/112,276
Filed: July 9, 1998
For: PROTECTION OF SOFTWARE AGAIN
AGAINST UNAUTHORIZED USE

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: Decision on Petition for
: Patent Term Extension
:
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The above-identified application has been forwarded to the undersigned for consideration on the "Petition for Patent Term Extension," which was filed on August 21, 2003. See 35 U.S.C. § 154(b)¹ and 37 C.F.R. § 1.701.

The petition is dismissed.

Petitioner argues that the Notice of Allowance mailed on July 17, 2003, improperly noted that the patent term extension is 0 days and that the patent term be extended due to the delay during the Appellate review by the Board of Patent Appeals and Interferences in the parent application (Application No. 08/587,448). Petitioner argues that the patent term should be extended for the period from the filing of the Appeal Brief in 1997 until the issuance of the first Office action in the instant application, which is December 5, 2000.

35 U.S.C. § 154 provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000, and, as amended by the "American Inventors Protection Act of 1999," enacted November 29, 1999, as part of Public Law 106-113, of other administrative delays in applications filed on or after May 29, 2000.

The above-identified application was filed on July 9, 1998. The application was not issued due to an adverse determination of patentability by the Board of Patent Appeals and Interferences pursuant to 37 CFR 1.701(a)(3). This application is not eligible for the extension or adjustment provisions under 35 U.S.C. 154. The Office has no authority to grant an extension or adjustment of the term due to administrative delays except as authorized by 35 U.S.C. § 154.

The delay in issuance of petitioner's application is regretted.

After mailing of this decision, the above-identified application will be returned to Office of Publications for further processing. The patent, if issued, will include an indication that the patent term is extended by 0 days. See 35 U.S.C. 254 and 37 CFR 1.322.

¹35 U.S.C. § 154 was amended by the "American Inventors Protection Act of 1999," which was enacted on November 29, 1999 as part of Public Law 106-113 (Consolidated Appropriations Act for Fiscal Year 2000). Since this amendment is effective May 29, 2000 and applies to applications filed on or after that date, the prior patent term adjustment provisions of 35 U.S.C. § 154 continue to apply to the above-identified application.

Telephone inquiries with regard to this communication should be directed to Mark Polutta at (703) 308-8122.



Mark Polutta
Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy